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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 SAMUEL LOVE,) Case No.: 5:18-cv-01262-CAS-KK
13 Plaintiff,) **DEFENDANT’S NOTICE OF EX**
14 vs.) **PARTE APPLICATION FOR**
15 TRUE VINE HOSPITALITY, LLC., a) **RELIEF FROM PLAINTIFF’S AND**
16 California Limited Liability Company;) **PLAINTIFF’S EXPERT’S NON-**
17 and Does 1-10) **APPEARANCE AT DEPOSITION**
18 Defendant.) **[MEMORANDUM OF POINTS**
19) **AND AUTHORITIES;**
20) **DECLARATION OF KALYAN**
21) **POKALA FILED**
22) **CONCURRENTLY HEREWITH]**

23 **PLEASE TAKE NOTICE** that defendant TRUE VINE HOSPITALITY,
24 LLC (“True Vine”) will and hereby does apply to the Court for relief from
25 Plaintiff’s refusal to appear for a properly noticed deposition on September 9,
26 2019, the discovery cut-off. Plaintiff’s expert, Paul Bishop, also failed to appear.

27 This non-appearance violates Federal Rule of Civil Procedure, Rule 30. The
28 depositions were properly noticed, with a reasonable time in which to appear (12
Defendant’s Ex Parte Application for Relief from Plaintiff’s and Plaintiff’s Expert’s
Nonappearance at Deposition, 1

1 days). True Vine noticed these depositions to occur earlier, on September 4, 2019,
2 but after Plaintiff informed True Vine that Plaintiff and his expert were unavailable
3 on September 4, 2019, True Vine served an amended deposition notice, scheduling
4 September 9, 2019. This amended notice was served on August 28, 2019, and
5 provided twelve days' notice.

6 True Vine seeks ex parte relief from the Court, as the discovery cut-off was
7 September 9, 2019, the same day the depositions were noticed. **True Vine seeks**
8 **relief in the form of taking Plaintiff's motion for summary judgment off**
9 **calendar until after Plaintiff and his experts and/or witnesses are compelled to**
10 **sit for deposition.**

11 Good cause exists to grant True Vine ex parte relief from Plaintiff's
12 deliberate refusal to attend his deposition or provide testimony from his experts or
13 witnesses.

14 Plaintiff took the deposition of True Vine's person most knowledgeable on
15 September 6, 2019, the business day prior to the depositions noticed for September
16 9, 2019. No mention was made about Plaintiff and his expert not appearing during
17 the deposition of True Vine's person most knowledgeable. True Vine did not
18 receive any objections to September 9, 2019, whether by phone, mail, or email.
19 True Vine showed upon on September 9, 2019, as noticed, and Plaintiff simply
20 failed to show up. After counsel for True Vine called Plaintiff after the deposition
21 was scheduled to start, Plaintiff suddenly remembered that they "thought" they had
22 served objections on August 30, 2019. Then Plaintiff's story changed, and said
23 that they "thought" they had "drafted" some objections the week of September 3,
24 2019. This does not indicate that they had ever been finalized, or served.
25 Plaintiff's objections are suspect in that Plaintiff easily communicated his
26 objections to the first scheduling of a deposition. That the objections to the
27 depositions noticed for the discovery cut-off mysteriously never showed up is very
28

1 convenient to a litigant preparing a motion for summary judgment with no
2 testimony which was subject to cross-examination.

3 Irrespective of that, Rule 30 specifically states that the deposition “will
4 proceed” despite objections, and the Court can rule on objections at a later time. In
5 other words, federal courts do not follow California’s civil procedure, wherein an
6 objection can suspend a deposition until the parties agree. Rule 30 states that
7 objections may be noted on the record, “but the examination still proceeds.”
8 F.R.C.P. Rule 30(c)(2).

9 Plaintiff’s conduct is consistent with Plaintiff’s conduct throughout the
10 course of this litigation. Plaintiff has produced no responsive documents, no
11 responsive interrogatory responses, although True Vine has attempted to meet and
12 confer with Plaintiff over the past several months to arrive at written discovery
13 “acceptable” to Plaintiff. When True Vine prepared a joint stipulation pursuant to
14 Rule 37-1, and Plaintiff indicated that Plaintiff would prepare Plaintiff’s portion
15 the next day, Plaintiff then stated that Plaintiff would not participate because the
16 motion to compel would be untimely under the Court’s rules. True Vine submitted
17 the joint stipulation after Plaintiff stated he would not participate, and Plaintiff
18 lodged an objection that the motion was untimely under the scheduling order.

19 True Vine lodged the joint stipulation with the intention that the Court might
20 suspend the discovery cut-off for the good cause demonstrated therein, but the
21 Magistrate denied the motion without prejudice, presumably because the date
22 noticed, September 12, 2019, was after the discovery cut-off of September 9, 2019.

23 Plaintiff has now filed a motion for summary judgment, even though
24 Plaintiff, and his expert, refused to appear for their duly-noticed depositions. After
25 Plaintiff made clear that September 4, 2019, would not work, True Vine
26 immediately asked Plaintiff if September 9, 2019 would work. Plaintiff’s counsel
27 stated that she “would look into it,” and never got back to True Vine. It is clear
28 that Plaintiff and his expert refused to appear on the day of the discovery cut-off so

1 that their evidence submitted in support of their motion for summary judgment
2 would not be subject to cross-examination.

3 Because Plaintiff and his expert refused to appear for their deposition
4 without adequately meeting and conferring on a different agreeable date, and have
5 submitted evidence which has not been subject to cross-examination, True Vine
6 requests that the Court take Plaintiff's motion for summary judgment off calendar,
7 and compel Plaintiff, and each of this two experts or witnesses, to appear for
8 deposition consistent with Rule 30.

9 This application was uploaded as soon as True Vine received the Notices of
10 Non-Appearance from the Court reporter.

11 True Vine notified Plaintiff that he would have 48 hours from the time of
12 uploading the ex parte application to provide a response, pursuant to the Court's
13 chambers rules. (Pokala Decl. ¶20)

14 This application is based upon this notice, the memorandum of points and
15 authorities, the declaration of Kalyan Pokala, and the proposed order filed
16 concurrently herewith.

17 Respectfully submitted,

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19 Dated: September 11, 2019

POKALA LAW APC

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22 /s/ Kalyan Pokala
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